

01-0679 B.E. v. Pepperidge Farm Inc. Issued: 1/18/02

Travelers Insurance Co., the workers compensation insurance carrier for Pepperidge Farm, Inc., asks the Appeals Board of the Utah Labor Commission to set aside the Administrative Law Judge's default order against Travelers in the matter of B. E.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

ISSUE PRESENTED

Does good cause exist to relieve Travelers from default?

FINDINGS OF FACT

On July 26, 2001, Ms. E. filed an Application for Hearing with the Labor Commission's Adjudication Division, seeking medical care and disability compensation for spinal injuries allegedly caused by a work-related accident at Pepperidge on May 24, 2000.

On August 20, 2001, the Adjudication Division mailed a Request For Answer to Pepperidge and

Travelers. The Request specifically stated that "(e)mployers and/or their insurance carriers or adjusting agencies must file with the Commission within 30 days of the date of this Request, an Answer responding to the Application for Hearing Failure to timely file an Answer within 30 days may result in an entry of your default."

Travelers claims it did not receive its copy of the Request for Answer. However, the Request was properly mailed to Travelers' correct address and was never returned to the Adjudication Division. In any event, Pepperidge forwarded its copy of the Request to Travelers on August 29, 2001. But because Travelers' claims adjuster was unfamiliar with Utah's workers' compensation system, the adjuster took no action on the Request for Answer and instead merely filed it away. Consequently, Travelers did not file a timely Answer to Ms. E.'s Application.

On September 24, 2001, because Travelers' Answer was past due, Adjudication Division staff followed what was, at that time, an informal practice of remailing the original Request for Answer. There is no evidence that Travelers' claims adjuster was aware of the "tracer" policy or that her actions or inactions were in any way influenced by the policy. The claims adjuster contends she did not receive the "tracer" until October 17, 2001, more than three weeks after it was mailed. In any event, the claims adjuster forwarded the "tracer" to an attorney who then filed an Answer on behalf of Travelers and Pepperidge on October 23, 2001. However, the ALJ had already entered default against Pepperidge and Travelers on October 18, 2001.

On October 30, 2001, Travelers asked the ALJ to set aside its default. On November 2, 2001, the ALJ issued an order denying Travelers' request. Travelers then filed a timely motion for review seeking Appeals Board review of the ALJ's order.

DISCUSSION AND CONCLUSIONS OF LAW

Statute and rule clearly require employers or their insurance carriers to file Answers to Applications for workers' compensation benefits within 30 days of the date the Adjudication Division issues its Request

for Answer. See §63-46b-7(1) of the Utah Administrative Procedures Act ("UAPA") and Labor Commission Rule R602-2-1.D. In cases where employers or their insurance carriers fail to file timely Answers, §63-46b-11(1)(c) of UAPA permits the ALJ to enter default. However, §63-46b-11(3)(a) of UAPA in conjunction with Rule 55(c) of the Utah Rules of Civil Procedure provides that "(f)or good cause shown the court may set aside an entry of default. . . ." The issue now before the Appeals Board is whether good cause exists to set aside the default entered against Travelers for its failure to file a timely Answer to Ms. E.'s Application.

The Appeals Board recognizes the general principle that defaults are not favored and should be set aside for reasonable justification. But the Appeals Board also recognizes that this principle of disfavor of defaults must be applied in the context of the type of proceeding being adjudicated. The workers' compensation system deals with the claims of injured workers who may be in immediate need of medical care and wage replacement. The workers' compensation system is intended to provide benefits to injured workers at the time they need such assistance. Dilatory conduct by the parties should not be permitted to frustrate these objectives. With these considerations in mind, the Appeals Board turns to the specific circumstances of this case.

Travelers acknowledges that it actually received the Request for Answer in this matter on August 29, 2001, but did not file an Answer until nearly two months later, on October 24, 2001. Travelers argues it should be relieved of its default because the claims adjuster assigned to this matter was unfamiliar with Utah workers' compensation procedure. The Appeals Board finds no merit to this argument. First, it is reasonable to expect an insurance company such as Travelers to provide adequate training and support to its claims adjusters. But more importantly, the plain language of the Request for Answer required that Travelers take action within 30 days. In the face of such a clear instruction, it was manifestly unreasonable for Travelers to file the document away without seeking advice or clarification. The Appeals Board concludes that the inexperience and negligence of Travelers' employee does not constitute good cause to relieve Travelers of its default.

As a second basis for relief from default, Travelers points to the Adjudication Division's informal "tracer" policy which reminded employers and insurance carriers to file Answers. This informal policy was not justified by any statute or rule and is no longer followed by the Adjudication Division. Nevertheless, Travelers argues that the "tracer" policy led Travelers to believe that it had an additional 30 days to file its Answer. But by Travelers' own admissions, its failure to file a timely Answer was due to its claims adjuster's inaction and lack of knowledge of Utah procedures. There is no indication that Travelers' failure to take timely, appropriate action was in reliance on the "tracer" policy. Consequently, the "tracer" policy

does not justify Travelers' inaction or constitute good cause to relieve Travelers of its default.

ORDER

The Appeals Board affirms the ALJ's entry of default against Travelers in this matter and denies Travelers' motion for review. It is so ordered.

Dated this 18th day of January, 2002.

Colleen S. Colton, Chair

L. Zane Gill

Patricia S. Drawe